

AMENDED IN ASSEMBLY JANUARY 4, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 408

Introduced by Assembly Member Saldana

February 23, 2009

~~An act to amend Section 65352 of, and to add Section 65352.6 to, the Government Code, and to add Section 13142.1 to the Water Code, relating to local planning. An act to amend Section 9010 of, to add and repeal Section 8254.5 of, and to add and repeal Article 5.5 (commencing with Section 8260) of Chapter 2 of Part 3 of Division 6 of, the Fish and Game Code, relating to commercial fishing.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 408, as amended, Saldana. ~~Local planning: water supplies.~~
Commercial fishing: lobster management enhancement.

Existing law prohibits the taking of lobsters for commercial purposes except under a valid lobster permit issued by the Department of Fish and Game. The base permit fee for a lobster permit is \$265.

This bill, commencing April 1, 2011, and until March 31, 2016, would impose, in addition to the permit fee, a supplemental fee of \$300, to be known as the Lobster Management Enhancement Supplement. The bill would require the department to deposit supplement revenues in the Lobster Management Enhancement Account, which the bill would create in the Fish and Game Preservation Fund. The bill would require that money in the account be expended by the department, upon appropriation by the Legislature, exclusively to fund specified projects and programs to improve lobster sustainability and management. The bill would create a 5-member Lobster Management Enhancement Advisory Committee to recommend to the department projects and

programs and budgets for the expenditure of account moneys, including a plan to prioritize expenditures. Those lobster management enhancement provisions would be repealed on January 1, 2017.

Existing law prescribes the construction and dimensions of a wire lobster trap.

This bill would revise the prescribed dimensions of wire lobster traps, and would add provisions relating to the use of a wire to hold the escape gap in place.

~~(1) The Planning and Zoning Law requires a city or county general plan to include specified mandatory elements, including a conservation element that considers, among other things, the identification of rivers, creeks, streams, flood corridors, riparian habitat, and land that may accommodate floodwater for purposes of groundwater recharge and stormwater management and a discussion and evaluation of water supply and demand. Before adopting or amending the general plan, the planning agency is required to refer the proposed action to specified entities.~~

~~This bill would require the planning agency to additionally notify the California regional water quality control board servicing the area before adopting or amending the general plan. The bill would require the regional board, upon receiving this notice, to provide the planning agency with certain information regarding implementation of low-impact development water management to increase local water supplies by increasing stormwater recharge and reuse. By imposing new duties on local public officials, the bill would create a state-mandated local program.~~

~~(2) The existing Porter-Cologne Water Quality Control Act requires the State Water Resources Control Board to formulate and adopt state policy for water quality control.~~

~~This bill would require the state board to increase, on or before January 1, 2015, the sustainable local water supplies available for meeting existing and future beneficial uses in this state by an unspecified amount of acre-feet per year, in excess of the 2002 levels of sustainable local water supply and would specify the methods to be used, pursuant to its existing authority, in meeting this goal.~~

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

1 SECTION 1. *The Legislature finds and declares all of the*
2 *following:*
3 (a) *California's spiny lobster fishery is an important component*
4 *of California's marine ecosystem, as well as an important source*
5 *of jobs for California fishermen and fisherwomen and food for*
6 *consumers.*
7 (b) *California's commercial and recreational lobster fishermen*
8 *and fisherwomen, primarily through associations, should*
9 *participate in the development and implementation of new*
10 *approaches to managing lobster fishing. Those approaches should*
11 *be designed to ensure economical and sustainable fishing.*
12 (c) *California's lobster fishing associations will greatly benefit*
13 *from an established mechanism that will provide a steady source*
14 *of funds for projects that promote the long-term sustainability and*
15 *improved management of the California spiny lobster fishery.*
16 SEC. 2. *Section 8254.5 is added to the Fish and Game Code,*
17 *to read:*
18 8254.5. (a) *In addition to the fee imposed pursuant to*
19 *subdivision (c) of Section 8254, commencing April 1, 2011, a*
20 *person described in subdivision (b) of Section 8254 shall also pay*
21 *a three hundred dollar (\$300) supplemental fee. The supplemental*
22 *fee shall be known as the Lobster Management Enhancement*
23 *Supplement. The department shall deposit Lobster Management*
24 *Enhancement Supplement revenues in the Lobster Management*
25 *Enhancement Account in the Fish and Game Preservation Fund*
26 *pursuant to Section 8262.*
27 (b) *Section 713 does not apply to the Lobster Management*
28 *Enhancement Supplement.*
29 (c) *This section shall become inoperative on March 31, 2016,*
30 *and, as of January 1, 2017, is repealed, unless a later enacted*
31 *statute, that becomes operative on or before January 1, 2017,*
32 *deletes or extends the dates on which it becomes inoperative and*
33 *is repealed.*

1 *SEC. 3. Article 5.5 (commencing with Section 8260) is added*
2 *to Chapter 2 of Part 3 of Division 6 of the Fish and Game Code,*
3 *to read:*

4
5 *Article 5.5. Lobster Management Enhancement Supplement*

6
7 8260. *As used in this article:*

8 (a) *“Account” means the Lobster Management Enhancement*
9 *Account established in Section 8262.*

10 (b) *“Committee” means the Lobster Management Enhancement*
11 *Advisory Committee established pursuant to Section 8263.*

12 8262. (a) *Lobster Management Enhancement Supplement*
13 *revenues received by the department pursuant to Section 8254.5,*
14 *and any interest earned on those revenues, shall be deposited in*
15 *the Lobster Management Enhancement Account, which is hereby*
16 *established in the Fish and Game Preservation Fund. The money*
17 *in the account, upon appropriation by the Legislature, shall be*
18 *expended by the department exclusively for projects and programs*
19 *to improve lobster sustainability and management consistent with*
20 *subdivision (b). The department shall maintain the internal*
21 *accountability necessary to ensure that expenditure of funds from*
22 *the account is consistent with the requirements and purposes of*
23 *this article. The department shall annually provide to the committee*
24 *a full accounting of expenditures from the account and make that*
25 *information available to the public.*

26 (b) *The committee shall develop a plan that prioritizes*
27 *expenditures on projects and programs that support long-term*
28 *sustainability or improved management, or both, of the California*
29 *spiny lobster fishery, consistent with Section 35650 of the Public*
30 *Resources Code, including, but not limited to, all of the following:*

31 (1) *Obtaining Marine Stewardship Council sustainability*
32 *certification.*

33 (2) *Coordination and collaboration within the fishery to help*
34 *develop or improve new management approaches that optimize*
35 *catch per unit effort and create incentives for ecosystem*
36 *improvement.*

37 (3) *Repaying loans for lobster fishery management improvement*
38 *projects.*

39 (4) *Conducting research leading to informed and strategic*
40 *management of the fishery.*

1 (5) *Preparation of a lobster fishery management plan.*

2 (c) *The director shall not fund any project or program pursuant*
3 *to this article that the director determines to be inconsistent with*
4 *the priorities identified pursuant to subdivision (b) and with this*
5 *article.*

6 (d) *Department administrative overhead, collection, or other*
7 *charges shall not exceed 15 percent of the annual expenditures*
8 *from the account.*

9 8263. (a) *The Lobster Management Enhancement Advisory*
10 *Committee is hereby created, consisting of five members, as*
11 *follows:*

12 (1) *One member, with an alternate, who is representative of the*
13 *state's commercial lobster fishermen and fisherwomen or who is*
14 *a biological scientist actively involved in lobster research and who*
15 *is affiliated with a college or university within the state. A member*
16 *appointed pursuant to this paragraph and his or her alternate*
17 *shall be appointed by the director from licensed lobster permittees*
18 *and scientists who have submitted their names for consideration.*

19 (2) *Three members, each with an alternate, appointed by the*
20 *membership of the California Lobster and Trap Fishermen's*
21 *Association. This subdivision does not prohibit persons selected*
22 *pursuant to paragraph (1) from also being a member of the*
23 *California Lobster and Trap Fishermen's Association.*

24 (3) *The director, or his or her designee.*

25 (b) *Except for a biological scientist member appointed pursuant*
26 *to paragraph (1) of subdivision (a), the committee members*
27 *described in paragraphs (1) and (2) of subdivision (a) and their*
28 *alternates shall hold a valid lobster permit.*

29 (c) *A vote by the committee is not valid unless all five members*
30 *or their alternates are present to vote.*

31 (d) *The committee shall recommend to the department projects*
32 *and programs consistent with subdivision (b) of Section 8262 and*
33 *budgets for the expenditure of moneys received pursuant to this*
34 *article.*

35 8264. *The department may receive funds for deposit in the*
36 *account, for purposes of this article, from sources other than the*
37 *sale of commercial fishing lobster permits, including, but not*
38 *limited to, grants from the federal government, grants from private*
39 *foundations, money disbursed from court settlements, and*
40 *donations and bequests from individuals. Additional funds received*

1 pursuant to this section shall not be deposited in the account unless
2 the person or entity providing the funds specifically designates in
3 writing, prior to or at the time of transmittal of the funds to the
4 department, that the funds are intended solely for deposit to that
5 account.

6 8265. This article shall remain in effect only until January 1,
7 2017, and as of that date is repealed, unless a later enacted statute,
8 that is enacted before January 1, 2017, deletes or extends that
9 date.

10 SEC. 4. Section 9010 of the Fish and Game Code is amended
11 to read:

12 9010. (a) Subject to Article 5 (commencing with Section 8250)
13 of Chapter 2, spiny lobster may be taken with lobster traps under
14 a lobster permit issued pursuant to Section 8254.

15 (b) Notwithstanding Sections 8660 and 8665, lobster traps may
16 be used in any area of the state not otherwise closed to the taking
17 of lobsters up to, but not closer than, 75 feet of any private pier,
18 wharf, jetty, breakwater, or dock.

19 (c) A wire lobster trap shall be built of rectangular wire mesh
20 with inside mesh measurement not less than $1\frac{7}{8}$ inches by $3\frac{7}{8}$
21 $3\frac{1}{2}$ inches, the ~~$3\frac{7}{8}$ -inch~~ $3\frac{1}{2}$ inch measurement to be parallel to
22 the floor of the trap. A wire lobster trap shall be fitted with at least
23 one rigid rectangular escape gap with an inside measurements
24 vertical measurement not less than $2\frac{3}{8}$ inches ~~by~~ at all points and
25 an inside horizontal measurement of not less than $11\frac{1}{2}$ inches.
26 ~~The at all points. The horizontal sides of the escape gap shall be~~
27 located parallel to, and ~~within two~~ the escape gap within $2\frac{3}{8}$ inches
28 of the floor on any outside wall of, the rearmost chamber of the
29 lobster trap and shall be clearly accessible to the lobsters.

30 (d) Notwithstanding subdivision (c), wire may be used to hold
31 the escape gap in place that reduces the inside vertical or
32 horizontal measurement of the escape gap specified in subdivision
33 (c), but only if all of the following requirements are met:

34 (1) The overall diameter of the wire, including any coating on
35 the wire, shall measure less than the diameter of 10 gauge wire.

36 (2) A maximum of one wire wrap shall be located on each
37 vertical side of the escape gap.

38 (3) A maximum of two wire wraps shall be located on the bottom
39 horizontal side of the escape gap.

(4) Wire shall not be used on the top horizontal side of the escape gap.

(5) Each wire shall be tightly wrapped against the inside surface of the escape gap and shall not pass over the inside surface more than once. As used in this paragraph, "tightly wrapped" means no space exists at any point between the wire and the inside surface of the escape gap.

(d)

(e) A lobster trap constructed of lath or other material shall have an opening to allow a means of escape along the full length of one side of the rearmost chamber. The escape opening shall be of a spacing of not less than $2\frac{3}{8}$ inches, and the spacing shall be located parallel to, and within two $2\frac{3}{8}$ inches of, the floor of the lobster trap.

~~SECTION 1. Section 65352 of the Government Code is amended to read:~~

~~65352. (a) Prior to action by a legislative body to adopt or substantially amend a general plan, the planning agency shall refer the proposed action to all of the following entities:~~

~~(1) A city or county, within or abutting the area covered by the proposal, and any special district that may be significantly affected by the proposed action, as determined by the planning agency.~~

~~(2) An elementary, high school, or unified school district within the area covered by the proposed action.~~

~~(3) The local agency formation commission.~~

~~(4) An areawide planning agency whose operations may be significantly affected by the proposed action, as determined by the planning agency.~~

~~(5) A federal agency if its operations or lands within its jurisdiction may be significantly affected by the proposed action, as determined by the planning agency.~~

~~(6) (A) The branches of the United States Armed Forces that have provided the Office of Planning and Research with a California mailing address pursuant to subdivision (d) of Section 65944 when the proposed action is within 1,000 feet of a military installation, or lies within special use airspace, or beneath a low-level flight path, as defined in Section 21098 of the Public Resources Code, provided that the United States Department of Defense provides electronic maps of low-level flight paths, special use airspace, and military installations at a scale and in an~~

1 electronic format that is acceptable to the Office of Planning and
2 Research.

3 (B) Within 30 days of a determination by the Office of Planning
4 and Research that the information provided by the Department of
5 Defense is sufficient and in an acceptable scale and format, the
6 office shall notify cities, counties, and cities and counties of the
7 availability of the information on the Internet. Cities, counties, and
8 cities and counties shall comply with subparagraph (A) within 30
9 days of receiving this notice from the office.

10 (7) A public water system, as defined in Section 116275 of the
11 Health and Safety Code, with 3,000 or more service connections,
12 that serves water to customers within the area covered by the
13 proposal. The public water system shall have at least 45 days to
14 comment on the proposed plan, in accordance with subdivision
15 (b), and to provide the planning agency with the information set
16 forth in Section 65352.5.

17 (8) The Bay Area Air Quality Management District for a
18 proposed action within the boundaries of the district.

19 (9) On and after March 1, 2005, a California Native American
20 tribe, that is on the contact list maintained by the Native American
21 Heritage Commission, with traditional lands located within the
22 city or county's jurisdiction.

23 (10) The Central Valley Flood Protection Board for a proposed
24 action within the boundaries of the Sacramento and San Joaquin
25 Drainage District, as set forth in Section 8501 of the Water Code.

26 (11) The California regional water quality control board serving
27 the area affected by the proposal.

28 (b) Each entity receiving a proposed general plan or amendment
29 of a general plan pursuant to this section shall have 45 days from
30 the date the referring agency mails it or delivers it in which to
31 comment unless a longer period is specified by the planning
32 agency.

33 (c) (1) This section is directory, not mandatory, and the failure
34 to refer a proposed action to the other entities specified in this
35 section does not affect the validity of the action, if adopted.

36 (2) To the extent that the requirements of this section conflict
37 with the requirements of Chapter 4.4 (commencing with Section
38 65919), the requirements of Chapter 4.4 shall prevail.

39 SEC. 2. Section 65352.6 is added to the Government Code, to
40 read:

~~65352.6. (a) The Legislature finds and declares that it is vital that there be close coordination and consultation between California's water supply agencies and California's land use approval agencies to ensure clean, sustainable, local supplies of water.~~

~~(b) It is, therefore, the intent of the Legislature to provide a standardized process for determining the adequacy of city and county general plans to achieve and promote clean, sustainable, local water supplies consistent with the goal set forth in Section 13142.1 of the Water Code.~~

~~(c) Upon receiving a notice pursuant to paragraph (11) of subdivision (a) of Section 65352 of a city's or a county's proposed action to adopt or substantially amend a general plan, the California regional water quality control board serving the area affected by the plan shall provide the planning agency with the following information, as is appropriate and relevant:~~

~~(1) Recommendations on amendments to the general plan that would facilitate and expedite implementation of low-impact development water management strategies that increase local water supplies and decrease pollution. These recommendations may be based on the May 2008 report of the California Ocean Protection Council "Resolution Regarding Low-Impact Development," the State Water Resources Control Board report "Review of Low Impact Development Policies: Removing Institutional Barriers To Adoption" of December 2007, and the stormwater guidance document prepared by the State Water Resources Control Board July 1, 2009, pursuant to Section 13383.7 of the Water Code.~~

~~(2) Any additional information that is relevant to the implementation of low-impact development water management to increase local water supplies by increasing stormwater recharge and reuse.~~

~~SEC. 3. Section 13142.1 is added to the Water Code, to read:~~

~~13142.1. (a) The state board shall take appropriate actions, pursuant to this division and consistent with the 2008-12 Strategic Plan, to increase, on or before January 1, 2015, the sustainable local water supplies available for meeting existing and future beneficial uses in this state in the amount of _____ acre-feet per year, in excess of the 2002 level of sustainable local water supply.~~

~~(b) The board shall achieve the water supply goal specified in subdivision (a) pursuant to the existing authority provided by this~~

1 division, through a combination of increasing conservation,
2 recycled water use, and stormwater recharge and reuse, by using
3 low-impact development water management strategies.

4 SEC. 4. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 a local agency or school district has the authority to levy service
7 charges, fees, or assessments sufficient to pay for the program or
8 level of service mandated by this act, within the meaning of Section
9 17556 of the Government Code.